

Canada Industrial Relations Board



Conseil canadien des relations industrielles

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BY COURIER

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Attention: Ms. Louise Béchamp
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Dear Sirs/Madams:

In the matter of the *Canada Labour Code (Part I–Industrial Relations)* and an application for reconsideration filed pursuant to section 18 thereof concerning Mr. Marcel St-Jean et al., applicants; the International Association of Machinists and Aerospace Workers and the International Association of Machinists and Aerospace Workers, Transportation District 140, certified bargaining agents; Air Canada and Aveos Fleet Performance Inc., employers. (28683-C)

The Canada Industrial Relations Board (the Board), composed of Ms. Elizabeth MacPherson, Chairperson, and Messrs. Daniel Charbonneau and Patrick J. Heinke, Members, has considered the above-cited application filed on March 22, 2011 by the President of Local 1751 of the International Association of Machinists and Aerospace Workers (Local 1751), Mr. Marcel St-Jean, and some 170 other members of that local (the applicants), seeking reconsideration of a decision issued by the Board on January 31, 2011.

Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed the written submissions of the parties, the Board is satisfied that the documentation before it is sufficient to permit it to decide this application without an oral hearing.

I–Nature of the Application

On January 31, 2011, the Board issued a decision and consequential orders (9994-U, 9995-U and 9996-U) in two files involving Air Canada, Aveos Fleet Performance Inc. (Aveos), the International Association of Machinists and Aerospace Workers and the International Association of Machinists and Aerospace Workers, Transportation District 140 (collectively, IAMAW or the union). Detailed reasons for the decision were issued on March 2, 2011 (*Aveos Fleet Performance Inc.*, 2011 CIRB LD 2515 (LD 2515)). A majority of the Board granted Air Canada and Aveos' application for a bargaining unit restructuring as a result of the sale of Air Canada's maintenance, repair and overhaul (MRO) business to Aveos in 2007, and dismissed the IAMAW's application for a declaration of single employer. The employee representative member on the Board dissented, and would have dismissed the employers' application and granted the union's application.

The applicants request that the Board amend the date of its decision from January 31, 2011 to March 2, 2011. The effect of this amendment would be to change the starting date for the calculation of the 74-day period in which the MRO employees must choose whether they wish to remain employees of Air Canada or accept employment with Aveos.

The applicants submit that, because of the delay in the release of the detailed reasons, the January 31, 2011 decision was incomplete. Accordingly, they state that they were unable to ask for reconsideration of the January 31, 2011 decision within the 21-day limit established by section 45(2) of the *Canada Industrial Relations Board Regulations, 2001* (the *Regulations*).

II–Background

The events leading up to the Board's January 31, 2011 decision are set out in LD 2515, but are reproduced here for convenience:

On June 25, 2010, Aveos Fleet Performance Inc. (Aveos) and Air Canada (collectively, the employers) filed an application with the Canada Industrial Relations Board (the Board) pursuant to sections 18.1, 44, 45 and 46 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) (Board file

no. 28234-C), seeking a declaration of sale of business and consequential orders affecting two bargaining units at Air Canada represented by the International Association of Machinists and Aerospace Workers (the IAMAW) and the International Association of Machinists and Aerospace Workers, Transportation District 140 (IAMAW 140) (collectively, the union). The employers requested that the Board declare and confirm that, for all purposes under the *Code*, the sale by Air Canada Technical Services Limited Partnership (ACTS LP) to Aveos of its Maintenance, Repair and Overhaul (MRO) business has had the effect and consequence of transferring the IAMAW bargaining certificates and collective agreements previously applicable to Air Canada's MRO business to Aveos. The employers also requested that the Board order the implementation of the parties' agreement with respect to matters arising from the application of sections 18.1 and 44 of the *Code*, including the process of employee transition from Air Canada to Aveos.

On October 1, 2010, the union filed an application pursuant to section 35 of the *Code* (Board file no. 28402-C) requesting that the Board declare that Air Canada, Aveos Holding Company (AHC) and Aveos are and continue to be a single employer for all labour relations purposes with respect to the MRO business. These two applications were consolidated on October 5, 2010.

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Prior to the filing of the instant applications, the Board had dealt with a number of complaints and applications involving the structure of bargaining units at Air Canada represented by IAMAW. The merger of Air Canada and Canadian Airlines International Ltd. in 2000 necessitated a restructuring of the bargaining units at Air Canada, including those represented by the IAMAW. In March 2006, the Board issued a certification order finalizing the scope of the technical, maintenance and operational support (TMOS) bargaining unit at Air Canada represented by the IAMAW. In the context of an application for a declaration of single employer filed by the IAMAW, the Board issued a replacement certification order in April 2006 to give effect to an agreement between the IAMAW and Air Canada, ACTS LP, Air Canada Cargo Limited Partnership (AC Cargo) and Air Canada Ground Handling Services Limited Partnership (ACGHS). That order confirmed that there was a single bargaining unit for employees performing the TMOS functions, and all four companies (which were all subsidiaries of ACE Aviation Holdings Inc. (ACE)), were named on the certification order.

On December 14, 2006, the IAMAW filed a complaint (Board file 26054-C), alleging that Air Canada had failed to disclose to the union, in a timely and appropriate manner, its plans to sell all or part of its MRO business (by then known as ACTS LP) to third party investors. There was no dispute that a sale of this nature would have a considerable impact on the TMOS bargaining unit represented by the IAMAW. This complaint was eventually resolved with the assistance of the Board. The resolution included an interim order for the disclosure of relevant documents and the conclusion of Minutes of Settlement dated June 29, 2007 and a Letter of Understanding dated August 7, 2007, which provided for the protection of employment conditions pending discussions between the parties with respect to the sale of ACTS LP and its consequences.

Through an Asset Purchase Agreement signed in June 2007, substantially all of ACTS LP's assets and certain of its liabilities were sold to a consortium consisting of Sageview Capital LLC and KKR Private Equity Investors LP. The transaction was completed on October 16, 2007. The resulting company operated under the name ACTS Aero Technical Support & Services Inc. (ACTS Aero) until September 23, 2008, when ACTS Aero changed its name to Aveos Fleet Performance Inc.

Air Canada, Aveos and the IAMAW entered into a Memorandum of Agreement on January 8, 2009 (the January 2009 MOA) that established a framework for the orderly transition of employees to Aveos and set out the terms and conditions of employment that would apply. The MOA provided that unresolved issues and disputes over its interpretation or application were to be settled by binding arbitration by Martin Teplitsky, Q.C. The January 2009 MOA also contemplated that the employers would make an application to the Board pursuant to section 45 of the *Code* to have the sale of business

recognized. On January 22, 2009, the Board issued an order that incorporated the January 2009 MOA, declared that it constituted a full and final settlement of Board file no. 26054-C, and directed the parties to cooperate in implementing the terms of the MOA.

A number of union members filed complaints alleging that the union's actions in entering into the January 2009 MOA constituted a breach of the duty of fair representation, in violation of section 37 of the *Code*. These complaints were considered and ultimately dismissed by the Board in *Jesse-Carl Gauthier*, 2010 CIRB 539.

In May and June 2009, Air Canada was facing serious financial difficulties. It negotiated a new MOA with the IAMAW (the June 2009 MOA), which extended the terms of the collective agreements applicable to the TMOS and clerical bargaining units by 21 months, to April 1, 2011, and amended certain provisions of the January 2009 MOA. Once again, any disputes regarding the terms of the MOA were to be referred to binding arbitration by Arbitrator Teplitsky.

A number of union members filed duty of fair representation complaints against the IAMAW with respect to the June 2009 MOA and the ratification process that was used by the union. These complaints were considered and ultimately dismissed by the Board in *Richard Vézina*, 2010 CIRB 540.

During this time period, Aveos was having financial difficulties of its own. In January 2010, Aveos reached an agreement with its lenders and equity holders on the terms of a consensual restructuring plan. The restructuring plan was finalized on March 12, 2010, and required that shareholders, including ACE, relinquish their shares. In addition, Air Canada and Aveos revised or entered into various commercial agreements. On June 16, 2010, Arbitrator Teplitsky issued a ruling indicating that the employers could proceed to file a sale of business application with the Board.

(LD 2515, pages 2–3 and 4–6)

Among other things, the “January 2009 MOA” between Air Canada, Aveos and the IAMAW referenced in LD 2515 set out a process for the orderly transition of Air Canada employees to Aveos in accordance with the expressed preference of those employees. The January 2009 MOA was accepted by the Board as a full and final settlement of the unfair labour practice complaint then pending before the Board (Board file 26054-C) and on January 22, 2009, was incorporated into a Board order directing the parties to co-operate in implementing its terms.

The January 2009 MOA contemplated that the employers would apply to the Board to sever the then existing IAMAW bargaining units at Air Canada, through an application under sections 44–46 of the *Code* (sale of business). In particular, the January 2009 MOA contained the following provisions:

“CIRB Date” means the effective date of the order(s) of the CIRB severing the current TMOS and Clerical bargaining units each into two separate bargaining units in respect of which Air Canada (including Air Canada Cargo and ACGHS) and Aveos, respectively, are named as the sole and separate employer in the separate bargaining unit certificates issued to replace each of the current bargaining unit certificates for the TMOS and Clerical bargaining units.

“Selection Closure Date” means seventy-four (74) days after the CIRB date.

The Board’s January 31, 2011 orders severing the IAMAW bargaining units at Air Canada and creating mirror units at Aveos were thus the triggering event for a complicated process, negotiated by the parties to facilitate the transition of employees from one employer to the successor employer.

Subsequent to the Board’s January 31, 2011 orders, the IAMAW applied to the arbitrator appointed pursuant to the January 2009 MOA, Martin Teplitsky, Q.C., for an extension of the selection closure date. The union argued that the purpose of the 74 days was to permit sufficient time for employees to make informed choices in completing the option selection form. While recognizing that not all of the outstanding issues had been resolved as of February 1, 2011, arbitrator Teplitsky found that the process had provided ample, timely information sufficient to permit informed decision-making and that no employee had been prejudiced. Accordingly, on April 13, 2011, the arbitrator ruled that “there [was] no need to extend the contractual dates and [that] no useful purpose would be served by an extension.”

III–Analysis and Decision

The parties to the Board decision and orders that the applicants seek to have amended are Air Canada, Aveos and the IAMAW. By virtue of section 36(1) of the *Code*, as the certified bargaining agent for the two bargaining units affected by that decision, the IAMAW has the exclusive authority to bargain on behalf of the employees in those units. Although the applicants are members of one of the affected bargaining units, they do not have the requisite standing to bring an application for review of the Board’s decision. Only a party to a Board decision, specifically a person or organization that is a party as of right or that has been granted intervenor status by the

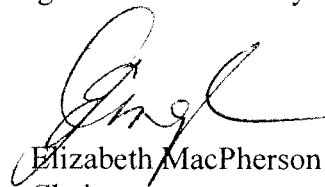
Board, can request that the Board reconsider that decision. On this ground alone, the application is dismissed.

However, even if the applicants had standing to request reconsideration, the application would have been dismissed on its merits. As the exclusive bargaining agent for the affected bargaining units, the IAMAW accepted the January 2009 MOA in settlement of its unfair labour practice complaint against Air Canada. That MOA established the framework for the orderly transition of employees from Air Canada to Aveos and set out a 74-day period between the date of the Board's orders and the date on which employees would have to exercise their option. The January 2009 MOA was incorporated into a Board order. In *Jesse-Carl Gauthier*, 2010 CIRB 539, the Board dismissed a duty of fair representation complaint against the IAMAW regarding the January 2009 MOA. An arbitrator appointed under the January 2009 MOA has ruled that there is no need to extend the contractual dates. The applicants have submitted no evidence of any prejudice that they have suffered or will suffer as a result of the enforcement of the 74-day period set out in the January 2009 MOA. The Board is therefore not persuaded that there is any justification for it to intervene in the manner requested by the applicants.

The Board also dismisses the applicants' argument that the January 31, 2011 decision and orders were incomplete. The Board does not always issue detailed reasons for its decisions, particularly in cases involving the certification of bargaining units. In such cases, the recitals contained in the Board orders serve as the reasons for the decision.

The application is therefore dismissed.

This is a unanimous decision of the Board and it is signed on its behalf by


Elizabeth MacPherson
Chairperson

c.c.: Mr. Peter Suchanek (CIRB-Toronto)
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